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11 *Counsel for Debtor*12 **UNITED STATES BANKRUPTCY COURT**13 **DISTRICT OF NEVADA**

14 In re

Case No. BK-S-23-10423-MKN

15 CASH CLOUD, INC.,

Chapter 11

16 dba COIN CLOUD,

17 Debtor.

**DEBTOR'S REPLY TO ENIGMA  
SECURITIES LIMITED'S OMNIBUS  
OBJECTION TO DEBTOR'S MOTIONS TO  
APPROVE REJECTION OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES**

18 Hearing Date: May 18, 2023

19 Hearing Time: 10:30 a.m.

20  
21 Cash Cloud, Inc. ("Cash Cloud" or "Debtor"), debtor and debtor in possession in the above-  
22 captioned chapter 11 case (the "Chapter 11 Case"), by and through its undersigned counsel, Fox  
23 Rothschild LLP, hereby files this Debtor's Reply To Enigma Securities Limited's Omnibus  
24 Objection To Debtor's Motions To Approve Rejection Of Executory Contracts And Unexpired  
25 Leases (the "Reply"). Enigma Securities Limited ("Enigma") has filed the Enigma Securities  
26 Limited's Omnibus Objection To Debtor's Motions To Approve Rejection Of Executory Contracts  
27 And Unexpired Leases ("Objection") objecting to the (i) *Debtor's Fourth Omnibus Motion for*  
28 *Entry of Order Approving Rejection of Executory Contracts and Unexpired Leases Pursuant to 11*

1 *U.S.C. § 365(a) and Disposal of Certain Personal Property Including Surrender and Termination*  
 2 *of the Automatic Stay and/or Abandonment* [ECF No. 355] (the “Fourth Rejection Motion”), (ii)  
 3 *Debtor’s Fifth Omnibus Motion for Entry of Order Approving Rejection of Executory Contracts and*  
 4 *Unexpired Leases Pursuant to 11 U.S.C. § 365(a) and Disposal of Certain Personal Property*  
 5 *Including Surrender and Termination of the Automatic Stay and/or Abandonment* [ECF No. 358]  
 6 (the “Fifth Rejection Motion”), (iii) *Debtor’s Sixth Omnibus Motion for Entry of Order Approving*  
 7 *Rejection of Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365(a) and*  
 8 *Disposal of Certain Personal Property Including Surrender and Termination of the Automatic Stay*  
 9 *and/or Abandonment* [ECF No. 361] (the “Sixth Rejection Motion”), and (iv) *Debtor’s Seventh*  
 10 *Omnibus Motion for Entry of Order Approving Rejection of Executory Contracts and Unexpired*  
 11 *Leases Pursuant to 11 U.S.C. § 365(a) and Disposal of Certain Personal Property Including*  
 12 *Surrender and Termination of the Automatic Stay and/or Abandonment* [ECF No. 364] (the  
 13 “Seventh Rejection Motion” and, collectively with the Fourth Rejection Motion, the Fifth Rejection  
 14 Motion, and the Sixth Rejection Motion, the “Motions”). This Reply is based upon the pleadings on  
 15 file, the Points and Authorities set forth herein, the Declaration of Tanner James, and any arguments  
 16 made by counsel in connection with the hearing(s) on the Motions.<sup>1</sup>

## 17 POINTS AND AUTHORITIES

### 18 **Factual Background**

19 1. The Debtor incorporates the factual background set forth in the Motions and as  
 20 supported by the Declaration of Christopher McAlary filed in support of each of the Motions at  
 21 ECF 356, 359, 362, and 365. In support of this Reply, the Debtor has also contemporaneously filed  
 22 the Declaration Of Tanner James In Support Of Debtor’s Reply To Enigma Securities Limited’s  
 23 Omnibus Objection To Debtor’s Motions To Approve Rejection Of Executory Contracts And  
 24 Unexpired Leases (“James Decl.”).

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26 ///

27  
 28 <sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motions.

**Memorandum of Law**

**A. The Debtor's Decision To Reject The Contracts And/Or Leases Is Not Premature**

2. In the Ninth Circuit, a bankruptcy court “should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession’s conclusion that rejection would be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (internal punctuation omitted).

The primary question to guide the court in deciding whether a debtor has properly exercised its business judgment is “whether rejection would benefit the general unsecured creditors.” *In re Chi-Feng Huang*, 23 B.R. at 801. Rejection should not be allowed where “the primary beneficiaries of rejection would be the debtors, not creditors.” *Id.* at 802.

*In re Hertz*, 536 B.R. 434, 442 (Bankr. C.D. Cal. 2015).

3. The Debtor has made the decision to reject the Contracts and/or Leases listed in the Motions because it has determined that the Contracts and/or Leases are not necessary for the Debtor’s operations and are financially burdensome and not beneficial to the estate. The Leases are not a source of potential value for the Debtor’s future operations, creditors, or interest holders, and are believed to not be marketable given their terms and constitute an unnecessary drain on the Debtor’s limited resources. See Declaration of C. McAlary at ECF 356, 359, 362, and 365. Further, the Debtor seeks to avoid depletion of the estate through accrual of administrative expenses associated with these Contracts and/or Leases. In addition, the Debtor has determined that there is no value to the estate in attempting to assume and assign the Contracts and/or Leases. See Declaration of C. McAlary at ECF 356, 359, 362, and 365.

4. Enigma opposes the Debtor’s Motions due to the impending sale and argues that potential buyers will be forced to have accepted the Debtor’s decisions that the Contracts and/or Leases should be rejected.

5. Enigma has not produced evidence that supports its argument that the Debtor’s determination to reject the Contracts and/or Leases is manifestly unreasonable. The Debtor made the decision to reject the Contracts and/or Leases after undertaking a financial analysis of the

1 expenses to the Debtor's estate associated with each Contract or Lease, and the benefits to the estate  
 2 and its creditors (as a whole, not just Enigma) associated with each Contract or Lease. See James  
 3 Decl. Among other things, the Debtor considered underperformance, high cure costs, ongoing  
 4 administrative expenses, and irreparable relationships with the hosts. Based on this analysis, the  
 5 Debtor determined, in its business judgment, that the Contracts and/or Leases are not beneficial to  
 6 the estate and should be rejected. See James Decl. To avoid further, ongoing expense to the estate,  
 7 the Debtor has requested that the rejection of the Contracts and Leases be effective as of the date of  
 8 the Motions.

9 6. Further, potential buyers of the Debtor's assets have not requested that the Debtor  
 10 remove any Contract or Lease from any of the Motions. See James Decl. The Debtor should not be  
 11 forced to retain Contracts and/or Leases that may give rise to administrative expenses simply  
 12 because Enigma, a secured creditor who can exercise its rights with regard to its collateral, has a  
 13 hope that a potential buyer might want to acquire the Contracts and/or Leases or Enigma's Kiosks.

14 7. Enigma further argues that the Debtor's decision to reject the Contracts and Leases is  
 15 speculative. "The court may deny rejection where the Debtors' decision "is clearly erroneous, too  
 16 speculative, or contrary to the provisions of the Bankruptcy Code...." *Allied Tech., Inc. v. R.B.*  
 17 *Brunemann & Sons*, 25 B.R. 484, 495 (Bankr. S.D.Ohio 1982), *quoted in Official Creditors'*  
 18 *Committee v. X10 Wireless Tech., Inc. (In re X10 Wireless Tech., Inc.)*, No. WW-04-1328-PST,  
 19 2005 WL 6960205, at \*3 (9th Cir. BAP April 5, 2005)." *Hertz*, 536 B.R. at 443-44. However, the  
 20 Debtor's decisions to reject the Contracts and Leases are not speculative. To the contrary, as stated  
 21 above, the Debtor has considered the financial benefit of the Contracts and Leases compared to the  
 22 financial burdens and costs and has determined that rejection of the listed Contracts and Leases is  
 23 beneficial to the estate. In addition, the Debtor has determined that there is no value to the estate in  
 24 attempting to assume and assign the Contracts and/or Leases. See Declaration of C. McAlary at  
 25 ECF 356, 359, 362, and 365 and James Decl.

26 8. The cases cited by Enigma regarding a debtor's decision to reject as being too  
 27 speculative are inapposite. For instance, in *In re Hertz*, the debtors' decision to reject a purchase  
 28 contract for real property in the hope of obtaining a higher sale price for the real property was found

1 to be based on “hope and speculation” and was not a decision made “prudently, on an informed  
 2 basis, in good faith, and in the honest belief that that the action taken was in the best interests of the  
 3 bankruptcy estate.” *Id.* at 442. The court further held in *Hertz* that the Debtors in that case were not  
 4 entitled to reject the real estate purchase contract to benefit themselves, and not creditors. This is  
 5 not the case here. The Debtor is not engaging in speculation in connection with its decision to  
 6 reject, and its decision to reject benefits creditors, not itself. Enigma is a secured creditor of the  
 7 Debtor, and the Debtor is considering the benefit of rejection for all creditors. Further, the Debtor’s  
 8 decision is not based on speculation as it was in *Hertz*. In fact, it is Enigma that is engaging in  
 9 speculation that a potential purchaser would desire to retain the Contracts and Leases sought to be  
 10 rejected and want to retain those locations where Enigma’s Kiosks are located.

11 9. Enigma further argues that “to the extent a potential purchaser does in fact ascribe  
 12 value to some of the Leases, then the Debtor’s premature rejection thereof may depress the sale  
 13 price for the Debtor’s assets—or enterprise valuation in a recapitalization transaction—to the  
 14 detriment of the estate.” [ECF 518 at p. 5]. As previously stated, the Debtor has determined that the  
 15 Contracts and Leases in the Motions are not financially beneficial, and thus, it is believed that  
 16 rejection will not depress the sale price given their lack of value. See James Decl. Furthermore, the  
 17 Debtor is not aware of any party who has requested that Contracts and Leases that are part of the  
 18 Motions be removed from being rejected. Indeed, potential buyers have expressed that the Debtor’s  
 19 locations should be reduced and have provided minimum performance thresholds as a benchmark  
 20 for what they are interested in acquiring. See James Decl.

21 10. Lastly, Enigma argues that rejection is generally made in connection with the plan of  
 22 reorganization process. While this may be the case, every case has different facts and  
 23 circumstances. Here, the Debtor has determined that the financial burden of the Contracts and  
 24 Leases, including the incurrence of administrative expenses, outweighs any benefit to this estate and  
 25 thus the Contracts and Leases are not beneficial to the estate and its creditors. See James Decl.

## 26 **B. The Debtor’s Decision To Abandon Kiosks Is Based on Section 554**

27 11. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the  
 28 trustee may abandon any property of the estate that is burdensome to the estate or that is of

1 inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). The right to abandon is  
 2 virtually unfettered, unless abandonment of the property will contravene laws designed to protect  
 3 public health and safety and the property poses an imminent threat to the public’s welfare. See In re  
 4 Midlantic Nat’l Bank, 474 U.S. 494, 501 (1986).

5 12. Here, the Debtor has determined, in its business judgment, that the Remaining  
 6 Property, the Kiosks, are not necessary for an effective reorganization and there is little to no equity  
 7 in the Remaining Property, including the Kiosks. As such, the Kiosks are burdensome to the estate  
 8 and are of inconsequential value to the estate.

9 13. Despite the Debtor’s broad discretion to abandon property of the estate, Enigma, a  
 10 secured creditor, argues that the Motions should be denied because its interests will be adversely  
 11 affected by the Debtor’s abandonment of the Kiosks prior to the sale auction. Enigma states that  
 12 although it “has obtained some indications of interest, to date no buyer has been willing to commit  
 13 to a purchase without assurances that it will be able to license the Debtor’s DCM software to  
 14 operate the machines going forward.” [ECF 518 at p.3]. Enigma’s opposition is based on its own  
 15 interests, not that of the Debtor’s estate or its creditors.

16 14. The Debtor has made the determination to abandon the Remaining Property under  
 17 the requirements set forth in Section 554 and they are met. Enigma does not dispute that there is a  
 18 lack of equity in the Kiosks, and that the Kiosks (or recovery of the Kiosks) are financially  
 19 burdensome to the estate. That Enigma chose only to take the Kiosks as its collateral, but not the  
 20 software contained in the Kiosks, is an issue for Enigma to determine and one that should not  
 21 adversely affect the Debtor’s estate and unsecured creditors.

22 15. Enigma further argues that no buyer has chosen to move forward with the purchase  
 23 from Enigma of the abandoned Kiosks due to “lack of assurances” regarding the use of the Debtor’s  
 24 software. [ECF 518 at p. 6]. Enigma argues that the absence of a purchaser at the time of the  
 25 abandonment will likely be fatal to Enigma’s efforts to dispose of the abandoned Kiosks, leaving  
 26 Enigma with two equally unappealing choices. That is, Enigma “must either (a) incur additional  
 27 time, expense, and effort to repossess, transport, and store the Abandoned DCMs pending the  
 28 auction, in the hopes that the winning bidder will be amenable to licensing the Debtor’s software

1 going forward, or (b) acquiesce to the abandonment and potential disposal of more than four  
 2 hundred machines to which it might otherwise have had recourse, in each case for no reason but  
 3 to accommodate the Debtor's (unjustified) desire to charge ahead with rejection and abandonment  
 4 prior to the auction." [ECF at p. 7].

5 16. Essentially, Enigma argues that the Debtor should not be allowed to abandon the  
 6 Kiosks because Enigma does not want to undertake the expense of taking possession of its  
 7 collateral, the Kiosks. First, as stated, the factors under § 554 for abandonment have been satisfied.  
 8 Second, there is no exception to abandonment that provides that abandonment should not occur to  
 9 allow a secured creditor to obtain possession of its property at a time that is optimal for it. In sum,  
 10 Enigma does not have a valid basis to oppose the Debtor's decision to abandon the Kiosks pursuant  
 11 to 11 U.S.C. § 554.

#### 12 **C. The Motions Are Not Unfair to Enigma**

13 17. Enigma further argues that the Court should not grant the Motions because Enigma  
 14 would face "an extraordinarily unfair result." [ECF 518 at p. 7]. The reality is that the Debtor, in  
 15 its business judgment, has filed the Motions because it believes that rejection and abandonment is in  
 16 the best interests of the estate and creditors. The Debtor simply does not have the ability to pay for  
 17 administrative expenses arising from the ongoing Contracts and Leases or for the removal of  
 18 Enigma's Kiosks. The Debtor should not incur administrative expenses that cannot be paid, or  
 19 incur needless administrative expenses that will need to be paid ultimately at the expense of  
 20 unsecured creditors. Enigma is a secured creditor who bargained for the collateral it obtained,  
 21 certain Kiosks, and did not obtain a security interest in the software that accompanies its collateral.  
 22 This bankruptcy cannot change these circumstances, and the rejection of burdensome contracts and  
 23 abandonment of burdensome property cannot be held in abeyance until Enigma secures a potential  
 24 outcome that it deems financially desirable. Further, it should be noted that despite its request for a  
 25 determination on the Motions, Enigma has not offered to compensate the estate for administrative  
 26 expenses that may be incurred due to the Contracts and Leases not being rejected while it seeks to  
 27  
 28

1 dispose of its collateral in the way Enigma deems best for it. In summary, the Motions should be  
2 approved under the standards set forth under 11 U.S.C. § 365 and § 554.

3 **CONCLUSION**

4 Based upon the forgoing, the Debtor respectfully requests that this Court enter orders  
5 granting the Motions.

6 Dated this 11th day of May, 2023.

**FOX ROTHSCHILD LLP**

7 By: /s/ Jeanette E. McPherson

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